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**BEFORE THE ARIZONA CORPORATION COMMISSION**

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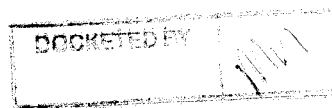
BOB STUMP  
COMMISSIONER

**IN THE MATTER OF THE  
APPLICATION OF GLOBAL WATER –  
PALO VERDE UTILITIES COMPANY  
FOR THE ESTABLISHMENT OF JUST  
AND REASONABLE RATES AND  
CHARGES FOR UTILITY SERVICE  
DESIGNED TO REALIZED A  
REASONABLE RATE OF RETURN ON  
THE FAIR VALUE OF ITS PROPERTY  
THROUGHOUT THE STATE OF  
ARIZONA**

**DOCKET NO. SW-20445A-09-0077**

Arizona Corporation Commission  
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FEB 19 2010



**IN THE MATTER OF THE  
APPLICATION OF VALENCIA WATER  
COMPANY – GREATER BUCKEYE  
DIVISION FOR THE ESTABLISHMENT  
OF JUST AND REASONABLE RATES  
AND CHARGES FOR UTILITY SERVICE  
DESIGNED TO REALIZE A  
REASONABLE RATE OF RETURN ON  
THE FAIR VALUE OF ITS PROPERTY  
THROUGHOUT THE STATE OF  
ARIZONA**

**DOCKET NO. W-02451A-09-0078**

**IN THE MATTER OF THE  
APPLICATION OF WILLOW VALLEY  
WATER CO. FOR THE  
ESTABLISHMENT OF JUST AND  
REASONABLE RATES AND CHARGES**

**DOCKET NO. W-01732A-09-0079**

1 **FOR UTILITY SERVICE DESIGNED TO**  
2 **REALIZE A REASONABLE RATE OF**  
3 **RETURN ON THE FAIR VALUE OF TIS**  
4 **PROPERTY THROUGHOUT THE STATE**  
5 **OF ARIZONA**

6 **IN THE MATTER OF THE**  
7 **APPLICATION GLOBAL WATER –**  
8 **SANTA CRUZ WATER COMPANY FOR**  
9 **THE ESTABLISHMENT OF JUST AND**  
10 **REASONABLE RATES AND CHARGES**  
11 **FOR UTILITY SERVICE DESIGNED TO**  
12 **REALIZE A REASONABLE RATE OF**  
13 **RETURN ON THE FAIR VALUE OF ITS**  
14 **PROPERTY THROUGHOUT THE STATE**  
15 **OF ARIZONA**

**DOCKET NO. W-20446A-09-0080**

16 **IN THE MATTER OF THE**  
17 **APPLICATION OF WATER UTILITY OF**  
18 **GREATER TONOPAH FOR THE**  
19 **ESTABLISHMENT OF JUST AND**  
20 **REASONABLE RATES AND CHARGES**  
21 **FOR UTILITY SERVICE DESIGNED TO**  
22 **REALIZED A REASONABLE RATE OF**  
23 **RETURN ON THE FAIR VALUE OF ITS**  
24 **PROPERTY THROUGHOUT THE STATE**  
25 **OF ARIZONA**

**DOCKET NO. W-02450A-09-0081**

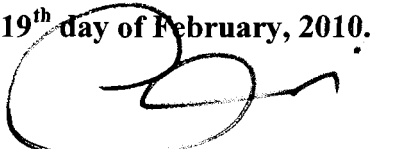
26 **IN THE MATTER OF THE**  
27 **APPLICATION OF VALENCIA WATER**  
28 **COMPANY – TOWN DIVISION FOR THE**  
ESTABLISHMENT OF JUST AND  
REASONABLE RATES AND CHARGES  
FOR UTILITY SERVICE DESIGNED TO  
REALIZED A REASONABLE RATE OF  
RETURN ON THE FAIR VALUE OF ITS  
PROPERTY THROUGHOUT THE STATE  
OF ARIZONA

**DOCKET NO. W-01212A-09-0082**

**CITY OF MARICOPA'S CLOSING  
BRIEF**

Intervenor, City of Maricopa, by and through its undersigned counsel hereby files its  
Closing Brief in the above captioned matter.

**RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of February, 2010.**



Court S. Rich  
Rose Law Group pc

**BRIEF OF INTERVENOR CITY OF MARICOPA**  
**(February 19, 2010)**

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## I. Introduction

When a utility take in money from a developer in exchange for providing water/wastewater plant that utility must deduct that money from its rate base and is prohibited from earning a rate of return on that cost free capital. Global Water Resources' ("Global") Infrastructure Coordination and Financing Agreements ("ICFA") are a very clear attempt to circumvent this Commission rule. The ICFA scheme is designed for the express purpose of allowing Global and its utilities to accept money from landowners in exchange for providing water/wastewater plant while at the same time earning a rate of return on that plant and pocketing the money received from the landowners. Global wants to be able to accept money under the ICFA and put it in the left pocket while pulling money out of its right pocket to build plant. Global argues that this accounting trick should allow it to earn a rate of return on the money used to build plant and should not trigger a rate base reduction.

As discussed below, the ICFA scheme has several troubling problems resulting in excessive carrying costs for infrastructure, speculative overbuilding of plant with the potential to threaten the stability of the utility, and increased rates to the customer. Further, practice has shown that the ICFAs simply do not provide the benefits they are alleged to bring. For all their hype, it turns out that ICFAs just do not work. Global argues that the ICFA scheme should be supported because Global practices responsible water management which is good for the public and the ICFA scheme is good for Global. The City disagrees that an ICFA scheme that leads to risky infrastructure planning, higher carrying costs and higher utility rates is the answer the public is looking for.

## II. ICFA is a scheme to avoid reductions in rate base

### A. The ICFAs are an agreement to provide plant in exchange for money.

Global repeatedly claims in its Brief that it does not provide plant to landowners under the ICFAs but the language of the ICFAs themselves and Global's testimony prove otherwise. Mr. Hill's own testimony makes it clear that the only reason he believes developers are entering

1 into the ICFA's are to get plant constructed. Mr. Hill stated, "[w]hat we have found is that  
2 [developers] don't care about any of that [planning and design of facilities]. What they want is an  
3 assured water supply delivered to the corner of their property by such and such a date." Trans.  
4 144:23-25, 145:1.

5 In an apparent contradiction of Mr. Hill's testimony, Global points to the Copperleaf  
6 ICFA to argue that ICFA was meant merely for the acquisition of the troubled WMC utility and  
7 not to provide plant. See Global Brief at 12:20-23. To the contrary, the ICFA includes the  
8 following provision:

9  
10 In return for payments by Landowner herein, and subject to the terms herein,  
11 Coordinator [Global] through WUGT and HUC, *shall construct* any and all water,  
12 reclaimed water, and wastewater treatment plant, delivery facilities and lines....

13  
14 Exhibit A-49 at 6 (emphasis added). The Copperleaf ICFA not only has Global promising to  
15 construct all of the relevant plant to serve the landowner's land in exchange for the payment of  
16 the fee, but it also goes one step further and guarantees that the landowner will not pay any  
17 additional fees to the utilities for any infrastructure. After requiring the landowner to enter into  
18 Extension Agreements with the utilities to get service the ICFA provides:

19  
20 The Extension Agreements *shall not contain any charges or fees for the cost of*  
21 *Off-Site Facilities* or related services provided to the Delivery Point, including  
22 any administrative or oversight charges. To the extent [the utilities] requests that  
23 the Landowner contribute or finance additional monies for Off-Site Facilities to  
24 provide water, reclaimed water or wastewater services to the Land, Coordinator  
25 hereby acknowledges and agrees that Landowner shall not be responsible for  
26 payment of such additional costs for Off-Site Facilities to [the utilities]. Rather,  
27 Coordinator shall be responsible for payment of any and all additional such costs  
28 for Off-Site Facilities as requested by [the utilities] or as otherwise required.

1  
2 Id at 7 (emphasis added). The ICFA provides in quite clear terms that Global will construct or  
3 cause the construction of plant to the serve the development in exchange for the payment to  
4 Global and that under no circumstances will Global ever require additional payments for plant.  
5 Maricopa's Opening Brief contains ample other examples from ICFAs in the record  
6 demonstrating that each of those ICFAs likewise contain a promise to provide plant in exchange  
7 for the money provided under the ICFA. Global's claims to the contrary are misleading and  
8 wrong.

9  
10 B. Global knowingly took risks in employing the ICFA scheme and cannot blame others

11 Global employed the ICFA scheme while knowing the treatment of the ICFA fees was  
12 not resolved (See Trans. 291:3-20), that it was the only entity it knew of operating in this manner  
13 (See Trans. 113:5-7), and that there was a risk that the Commission could treat the fees as CIAC  
14 (See eg Exhibit A-49 at 15) (the City of Maricopa explains this more fully in its Opening Brief).  
15 Global attempts to position itself as the potential victim in this case despite the fact that it is the  
16 sole cause this problem.

17 Global claims that Staff and RUCO's pro-ratepayer positions, "jeopardize the future of  
18 the only water company in the state pursuing Total Water Management, the only water company  
19 with a proven track record of massive groundwater conservation, the only water company  
20 currently acquiring and integrating troubled water companies." Global Brief at 28:7-10. There  
21 are several problems with Global's position as stated in this quote; 1) It is not Staff and RUCO  
22 that have gotten Global into this situation but instead it is Global itself that made a series of  
23 dangerous and risky business decision to employ a previously unused financing scheme without  
24 getting any approval from the Commission. It is Global's knowing and reckless use of this  
25 unapproved method and not RUCO and Staff's position that is causing trouble for Global; 2)  
26 Global seemingly is taking the position that it is now "too big to fail" and that any position  
27 against its ICFA scheme that it based its business on jeopardizes its future and by Global's  
28 hyperbolic implication; the future of Arizona. The Commission should reject this overly alarmist

1 argument. 3) Global's repeated assertion that it is the only water company in the state working  
2 towards its self branded "Total Water Management" is meaningless. Global did not invent  
3 responsible water management and just because no other company is working toward its exact  
4 "Total Water Management" plan as Mr. Hill penned it does not mean that there is no other  
5 responsible water management going on in the State; 4) Global fails to point out that while it  
6 may be the only company integrating troubled water companies right now, that it also is likely  
7 the only water company that has overbuilt plant in advance of development to the extent that it  
8 has. The ICFA scheme has its own problems.

### 11 **III.ICFAs do not work**

#### 12 **A. ICFAs have already failed to provide the benefits that Global alleges they present.**

13 Global alleges that ICFAs are necessary to offset the high carrying costs that result from  
14 its "Total Water Management" plan however, the facts show that ICFAs have failed in that  
15 regard. Global states, "[w]ithout the ability to offset the carrying costs of regionally-sized  
16 infrastructure TWM will be financially unfeasible." Global Brief at 21:10-11. The fact of the  
17 matter is that Global has no more ICFA money on hand to use to pay carrying costs on the  
18 Southwest Plant because it has exhausted all those funds. *See* Trans. 282:22-25, 283:1. It is  
19 curious to see Global argue that ICFAs are the only way to implement its "Total Water  
20 Management" and are essential to cover the high carrying costs associated with the plan while at  
21 the same time admitting that it is out of ICFA money. If the benefit of ICFAs is the ability to use  
22 the fees to pay the high carrying costs of "Total Water Management" and there are no ICFA fees  
23 available for that purpose, then it can be concluded that the ICFA scheme has failed to support  
24 the "Total Water Management" plan that it was designed to further. In other words, the ICFA  
25 scheme is an experiment that failed.

1 B. ICFA scheme results in negative consequences.

2 Not only has the ICFA scheme not fulfilled its goal of covering the high carrying costs of  
3 Global's management plan but, the ICFA scheme has resulted in its own set of problems. The  
4 analysis immediately above illustrates one of the key flaws in the ICFA scheme; what happens  
5 when there are insufficient ICFA funds to cover the carrying costs of the speculative  
6 infrastructure that is built ahead of development and for development that may never come?  
7 Global estimates that the carrying costs on the Southwest Plant alone are approximately \$8  
8 million per year. See Exhibit A-9 at Exhibit 4 (under "total debt service"). What if it is a five  
9 years or decade before the area served by the Southwest Plant south of Maricopa even begins to  
10 see development move forward? What if it is longer? Global will be paying \$8 million per year  
11 in carrying costs and as long as developments are not moving forward, Global will not be  
12 receiving ICFA fees to use to offset those carrying costs. It is not hard to imagine a situation  
13 where in 5-10 short years Global will have spent \$40-\$80 million on carrying costs for unused  
14 plant. As a direct result of the ICFA scheme Global has speculated on a huge amount of plant  
15 and is now in a financially dangerous position.

16 In addition, the ICFA scheme clearly has resulted in speculation on oversized plant (the  
17 Southwest Plant) to try and time development or guess the market. The ICFA scheme places the  
18 health of the utility and its parent company at risk when growth slows and there are no more  
19 ICFA fees rolling in to pay carrying costs. The utility and its customers would not be at risk if  
20 this plant had been built by developers using the CIAC/AIAC model. In the end the ratepayer  
21 ends up paying higher rates in order to pay the utility a rate of return on plant even though the  
22 utility built the plant in exchange for developer money. These are real and troubling problems  
23 that are a direct cause of the ICFA scheme.

24  
25 C. All utilities will use this method to allow them to earn a return on free plant resulting in  
26 higher rates for all ratepayers.

27 If the Commission allows utilities to use ICFAs to take in money from a landowner, build  
28 plant to serve that landowner, and still earn a return on the plant then every other utility will

1 immediately implement this scheme to avoid reductions in rate base while earning a rate of  
2 return on free money. Take the example of a utility company that is faced with a choice  
3 between; 1) taking money from a landowner to build plant and earning no rate of return on that  
4 plant (the traditional AIAC/CIAC model); or 2) taking money from a landowner and putting it  
5 aside before building plant with some other money and earning a rate of return on the plant while  
6 keeping the money from the landowner (the ICFA method). The utility will select number 2  
7 every time to allow it to earn return on the plant in service. In each instance the utility receives  
8 money from the developer and the developer ends up with plant but with the ICFA scheme the  
9 utility can earn a return even though it has not seen a net expenditure of its own funds on the  
10 plant. There is no reason why this would not become the normal practice in Arizona if it is  
11 allowed. This will result in higher rates across the State for all ratepayers that are subject to this  
12 scheme because they will be paying a rate of return on plant that was built without the utility  
13 expending any real capital.

#### 14 15 16 **IV. ICFA issue should be about the ratepayers**

##### 17 **A. This case is not about responsible water management practices**

18 Global attempts to extrapolate that the Commission actually is deciding whether or not  
19 the State of Arizona should engage in responsible water management in deciding whether or not  
20 to treat ICFAs as CIAC/AIAC and deduct them from rate base. To the contrary, the Commission  
21 is doing what it always does in rate cases and is deciding the fair and just rate to charge the  
22 ratepayers. The issue before the Commission is not whether or not Global's self branded "Total  
23 Water Management" ideals are good or bad but whether or not Global's one of a kind scheme of  
24 taking in developer money at the parent level in exchange for plant and then building plant with  
25 other debt or equity is good for the ratepayer despite its resulting higher rates. Global's attempt  
26 to marry the pro ICFA position to a position in favor of responsible water management is nothing  
27 more than a self serving trick of political semantics and should be rejected.

1 B. There are other ways to encourage responsible water management

2 There was no evidence introduced that supports the claim that responsible water  
3 management cannot be achieved without the ICFA scheme. Global claims in its Brief that its  
4 self branded "Total Water Management" is unlikely to be pursued in the absence of the ICFA  
5 scheme. *See* Global Brief at 21:10-11. It is important to remember that when Global uses the  
6 term "Total Water Management" it is not necessarily referring to the idea of responsible water  
7 management in general but instead it is referring only to the specific plan by that same name that  
8 Mr. Hill himself drafted.

9 Global fails to explain why it believes the ICFA method is the only way to promote  
10 responsible water management. Certainly, Global goes to lengths to explain how it believes the  
11 ICFA method contributes to responsible water management but it does not explain why there  
12 could not be several other ways to deal with this issue. Increased coordination and mandated  
13 planning between private water and sewer companies; mandates on reuse; additional rule making  
14 or legislation to promote regionalization or to actually change the law to allow a limited return  
15 on cost free capital used for oversizing or reuse are all possible ways to encourage responsible  
16 water management without the ICFA scheme. The City of Maricopa takes no position on any of  
17 these suggestions but merely notes that all offer potential alternatives to the ICFA scheme. The  
18 ICFA is not the only way to encourage responsible water use.

19  
20  
21 **V. Conclusion**

22 Global's proposed rate increase would heavily tax the hard working people of the City of  
23 Maricopa and must be drastically reduced to be fair and just. The City understands Global's  
24 need to make money and the important role Global plays in making the City a great place to live  
25 and work. That said however, it appears Global has knowingly employed a risky financing  
26 scheme designed to move money around in an attempt to raise its revenues and the citizens of the  
27 City of Maricopa should not be made to suffer as a result. The rules that apply to other utilities  
28 must apply to Global and when it receives landowner money in exchange for building plant it

1 should not be allowed to earn a rate of return on that money and it must be deducted from the  
2 rate base at the time the rate case is brought. The City asks that the Commission take any and all  
3 actions it can to reduce the amount of this rate increase and its potentially devastating impact on  
4 the City and its citizens. The City of Maricopa thanks the Commission and the Administrative  
5 Law Judge for their time in considering this important issue. The City incorporates herein by  
6 reference all arguments made in its Opening Brief.

1 ***Original plus 13 copies of the foregoing***  
2 ***filed this 19<sup>th</sup> day of February 2010, with:***

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7 ***Copies of the foregoing sent via electronic mail***  
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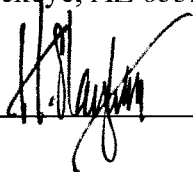
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